

No. 84-1244

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1984

SUSAN J. DAVIS, *et al.*,

Appellants,

vs.

IRWIN C. BANDEMER, *et al.*,

Appellees.

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF INDIANA

JOINT APPENDIX

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Relevant Docket Entries Below

- 1/20/82 Court files entry naming panel as designated by the Chief Judge of the Seventh Circuit Court of Appeals, providing that Judge Wilbur Pell shall be presiding Judge and Judge Gene E. Brooks shall be the third member of the panel. Court sets briefing schedule. (S.E.)
- 4/8/82 Plaintiffs file: (1) Notice of amendment to complaint, c/s; (2) Amended complaint, c/s.
- 5/3/82 Court enters order Denying the defendant's motions to dismiss. Court orders that these cases are now consolidated for all further proceedings including trial. All discovery shall be completed by July 30, 1982. Court files memorandum entry. (S.E.).
- 11/9/82 Upon the motion of defendants filed May 12, 1982; said motion requesting the Court to dismiss or in the alternative to abstain the Court now enters order denying said motion. (S.O.) Parties are hereupon requesting to notify this Court as to the status of these proceedings, what further matters must be concluded to expedite trial and a recommendation as to appropriate trial date for this cause.
- 10/12/83 Three Judge Panel Court Trial. 10:05 A.M. Parties appear Theodore Boehm, Christopher Scanlon and John Swarbrick appear on behalf of plaintiff Bandemer. Michael Sussman and Dennis Hayes Appear on behalf of the N.A.A.C.P. Plaintiffs. William M. Evans and Michael Schaefer appear on behalf of defendants. Pre-trial held. Opening statements heard. 10:35 A.M. Court convenes. 4:00 P.M. Plaintiff Bandemer Rests. 4:00 P.M. Plaintiff NAACP Evidence commences. 5:00 P.M. Court recessed until November 16, 1983.

11/16/83 9:45 A.M. Parties appear and Court convenes. Plaintiff NAACP evidence continues. 2:45 P.M. Plaintiff NAACP Rests. 3:00 P.M. Defendant's evidence commences. 6:45 P.M. Defendants Rest. Court Orders plaintiffs to submit first briefs within 20 days. Defendants are to submit answer briefs within 15 days after plaintiff's briefs are submitted. And Rebuttal briefs are to be filed within 10 days from date of defendants briefs. Court orders all briefs to be no more than 35 pages in length. Court to hear oral argument after all briefs are submitted at a future date to be determined by the Court. 7:00 P.M. Court recessed.

1/23/84 Court enters entry and NOW ANNOUNCES that while the opinion of this Court will be entered as soon as practicable the effective date of the decision will be subsequent to the conduct of the 1984 election at which members of the Senate and House of the General Assembly of Indiana will be elected. IT IS SO ORDERED.

1/23/84 9:45 A.M. Parties appear court is convened. Theodore Boehm begins final argument for plaintiff Bandemer. 10:00 A.M. Michael Sussman's final argument for plaintiff, N.A.A.C.P. 10:25 A.M. William Evans begins final argument for defendants. 10:50 A.M. Theodore Boehm presents rebuttal for plaintiff, Bandemer. 11:00 A.M. Michael Sussman presents rebuttal for plaintiff, N.A.A.C.P. 11:05 A.M. Court announces it will take matter under advisement. 11:05 A.M. Court is adjourned. Court enters Entry (See Jan. 23, 1984 Entry).

12/13/84 Court enters ORDER AND

1. DECLARES and DECREES that the 1981 Indiana House and Senate legislative

reapportionment acts and the 1982 amendments thereto are unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

2. ORDERS that this decision has prospective application only and this Court hereby recognizes that the November 6, 1984 election was legally held and, further, that the 1985 session of the General Assembly and its members are duly constituted under the law.

3. ORDERS that the state officers responsible for implementing the election laws and holding elections thereunder are hereby ENJOINED from holding elections pursuant to the 1981 House and Senate reapportionment acts and 1982 amendments thereto subsequent to the November 6, 1984 general elections.

4. ORDERS that the 1985 session of the Indiana General Assembly is hereby afforded the opportunity to enact legislation to redistrict the State and reapportion the legislative seats in the General Assembly in accordance with federal constitutional requirements and in compliance with this opinion.

5. ORDERS that this court shall have and retain continuing jurisdiction over the present cases and should the 1985 General Assembly not enact a reapportionment law which is in compliance with federal constitutional requirements and the Orders of this Court, then this Court shall further act as it is deemed necessary and appropriate under the circumstances then presented to the Court. Case Closed ... cm (E.O.D. 12/13/84)

12/18/84 Motion to modify or amend filed by defendants, c/s.

JA-4

- 12/21/84 Bandemer Plaintiffs' response to defendants' motion to modify or amend filed, c/s.
- 12/27/84 Court orders that the motion to modify or amend is Denied. (S.O.).
- 1/11/85 Susan J. Davis, John Livengood, and Thomas S. Milligan, as members of the Indiana State Election Board, Laurie Potter Christie, as Executive Director of the Indiana State Election Board, and Edwin J. Simcox, as Secretary of State of Indiana, defendants in Cause No. IP 82-56-C, hereby appeal to the Supreme Court of the United States pursuant to 28 U.S.C. 1253 from those portions of this Court's opinion and order entered December 13, 1984, with respect to the issues raised in Cause No. IP 82-56-C, with (i) declared unconstitutional under the Fourteenth Amendment to the United States Constitution the 1981 Indiana House of Representatives and Senate reapportionment acts and the 1982 amendments thereto, (ii) enjoined the Indiana State officers responsible for implementing the election laws and holding elections thereunder from holding elections pursuant to the 1981 House and Senate reapportionment acts and 1982 amendments thereto, and (iii) ordered the Indiana General Assembly in 1985 to enact legislation to redistrict the State and Reapportion the legislative seats in the General Assembly. Copy of the notice of appeal, docket entries and order sent to the United States Supreme Court.
- 1/5/85 Court reporter files transcript of trial held October 12, 1983—one volume. Court reporter files transcript of trial held November 16, 1983 — one volume.

JA-5

- 2/11/85 Received from the Supreme Court of the United States evidence of the docketing of appeal. Assigned number 84-1244.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IRWIN C. BANDEMER, et al)
)
vs.) Cause No.
) IP 82-56-C
SUSAN J. DAVIS, et al)
)
INDIANA N.A.A.C.P. STATE)
CONFERENCE OF BRANCHES, et al)
)
vs.) CAUSE NO.
) IP 82-164-C
ROBERT D. ORR, Governor,)
STATE OF INDIANA, et al)

ORDER

These causes are before the Court upon the motions of defendants to dismiss plaintiffs' complaints, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Whereupon the Court, having considered the motions and materials filed in support thereof and opposition thereto, and having heard oral argument, hereby rules as follows:

1. Defendants' motions to dismiss are DENIED;
2. Cause Nos. 82-56 and 82-164 are consolidated, *sua sponte*, for all further proceedings including trial;

3. All discovery shall be completed by July 30, 1982.
IT IS SO ORDERED.

DATED this 3rd day of May, 1982.

/s/ Wilbur F. Pell, Jr.

WILBUR F. PELL, JR., Circuit Judge
United States Court of Appeals for the
Seventh Circuit

/s/ James E. Noland

JAMES E. NOLAND, U. S. District Judge

/s/ Gene E. Brooks

GENE E. BROOKS, U. S. District Judge

MEMORANDUM ENTRY

Following the 1980 census, the 1981 Indiana General Assembly reapportioned the voting districts of Indiana's electors. House Bill 1475 was adopted by the Indiana House of Representatives and signed by the Governor. *Ind. Code* §2-1-1.5-1 *et. seq.* (1981). This law divides the state into 77 districts. Sixty-one of the districts elect a single representative, nine districts elect two representatives, and seven elect three representatives. Senate Bill 85, which was adopted by the Indiana Senate and signed into law, *Ind. Code* §2-1-2.2-1 *et. seq.* (1981), divides the state into 50 single-member districts.

The plaintiffs in No. 82-56 are black and white voters residing in various counties in Indiana. They allege in Counts I through III of their amended complaint that the House and Senate reapportionment laws violate the equal protection clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983. Counts IV through VIII present various pendent state claims under the Indiana Constitution.

The plaintiffs in No. 82-164 are state and county branches of the N.A.A.C.P., and individual black voters residing in various counties in Indiana. They allege in paragraphs 47 through 50 of their complaint that the reapportionment plans violate the Fourteenth and Fifteenth Amendments to the United States Constitution, and Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1971 (C) (1981).

Defendants now move to dismiss both complaints for failure to state a claim. Essentially, defendants contend that allegations of mere political gerrymandering do not raise a justiciable constitutional issue, and that for a cognizable claim of racial gerrymandering, allegations of purposeful invidious discrimination are essential. Defendants consider both complaints lacking justiciable issues for trial.

In *Whitcomb v. Chavis*, 403 U.S. 124 (1971), the Supreme Court stated the standard by which a challenge to multi-member district systems is measured:

[W]e have deemed the validity of multi-member district systems justiciable, recognizing ... that they may be subject to challenge where the circumstances of a particular case may 'operate to minimize or cancel out the voting strength of racial or political elements of the voting population.' (Citations omitted). *Id.* at 143.

The complaint in No. 82-56 meets this standard. Paragraphs 15 and 16 of the complaint allege that the mixing of multi-member and single-member districts was designed to minimize or cancel out the voting strength of racial or political elements of Indiana electors. These allegations are sufficient to surpass a motion to dismiss for failure to state a claim. At the trial on the merits, however, plaintiffs must be prepared to prove that the reapportionment plan was designed to further the alleged discrimination. *Whitcomb v. Chavis*, 403 U.S. 149; *City of Mobile v. Bolden*, 446 U.S. 55, 66 (1980).

The complaint in No. 82-164 also survives the *Whitcomb v. Chavis* analysis. Paragraph 47 alleges that mixing single and multi-member house districts invidiously discriminates against minority voters. Furthermore, paragraph 50 alleges that the Senate reapportionment plan intentionally dilutes black voting strength and minimizes black political influence in Indiana. During oral argument, plaintiffs' counsel recognized that "(p)roof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause." *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 265 (1977).

Therefore, the Court concludes that a genuine controversy exists between the plaintiffs and defendants in Nos. 82-56 and 82-164. Plaintiffs' complaints sufficiently state claims for relief under Rule 8(a) of the Federal Rules of Civil Procedure. Accordingly, defendants' motions to dismiss are DENIED.

**Excerpts from the Deposition of
Robert D. Garton**

[Pages 123-125]

383 Q. Now there were Democrats who were appointed in the Senate to be on this committee, were there not, to be advisors on the committee?

A. Advisors.

384 Q. Who were they?

A. I hope you have the record, because I think that it was Senator Townsend and Senator Carson.

That's my memory.

385 Q. You think Carson was appointed?

A. I think so.

386 Q. And who did that appointment, you did?

A. Yes.

387 Q. What are the advisors supposed to do on committees, what's the role?

A. It's not defined. I'm trying to recall.

The way we operate in our process, you must have four signatures from the four conferees.

And advisory role I think is as much as anything a recognition of personal interest and also the influence.

388 Q. Did the advisors have access to your knowledge to the materials, the maps, before others had access to them, others meaning those not on the committee?

A. I don't know.

389 Q. Were they invited into the discussion of the conference committee to be part of the discussion?

A. As I say, I think there was only one specific meeting of that conference committee. And that's when the public announcement was made.

Mainly because there was nothing to meet about until you had proposed language.

390 Q. Well, I assume a group of Republicans—you don't know how that worked?

A. No.

And in terms of appointments in researching the record I found that when the Democrats controlled the State Senate the conferees were Democrat.

I don't even think they had recognition of Republican advisors. At least the record didn't show it.

And you had to recall what I said, that a conference report must be signed before you can vote on it.

And if someone refuses to sign it, then the pro tem or the speaker can remove the appointments from that House.

But why go through that process when it was indicated to me very clearly that no Democrat would vote for any redistricting plan proposed by Republicans.

391 Q. Who indicated that?

A. The minority leader.

392 Q. Who was?

A. Senator O'Bannon.

And it was reaffirmed by other Democratic senators.

393 Q. To you, personally?

A. Yes.

394 Q. So you'd risk not getting a bill out if you appointed any of them to the committee?

A. Conference report, yes.

Also following the precedent as I said.

**Excerpts from the Deposition of
Charles E. Bosma**

[Pages 51-53, 110-111, 115-117, 163-164, 171]

148 Q. So in any case, going back to the impact of incumbency, were any lines drawn to your knowledge which specifically were drawn the way they were out of deference to incumbency?

A. Absolutely.

149 Q. Which lines were those?

A. All of them.

150 Q. Now I take it that—

A. That was one of the other priorities that we wanted to try to follow. And that was to protect those who were already serving, particularly of our own party.

And you'll have to recognize that reapportionment is a political matter.

151 Q. I think you indicated earlier that there were some cases to your knowledge about incumbency suggesting it was a rightful priority or rightful consideration?

A. I don't think I mentioned that. If I did, I don't recall.

152 Q. So do you have knowledge of the legal basis as you understand the legal basis for regarding incumbency as an important consideration?

A. I don't know that there is a legal basis regarding the incumbency factor.

I think it's a political consideration.

153 Q. Now you mentioned the non-dilution of minorities.

Could you tell me what, to you at least at chair person of the committee, that meant in the 1981 redistricting?

- A. To me that meant that where there was a majority black population, that is more than fifty percent, that non-dilution would be to maintain more than fifty percent in that area.

154 Q. So you're talking about preserving districts which are already more than fifty percent minority?

- A. That's right.

To preserve the majority black population in a district where it currently existed.

155 Q. Now can you tell me what the source of your judgment of that definition is or that understanding is? Did someone tell you that? Did you read it somewhere?

- A. I don't know that I read it somewhere.

I supposed it might have been an assumption on my part that that's what it meant.

But you should not break the possibility of them having a majority vote in the district.

And I think maybe another aspect of that is to try to preserve where it's below a majority, to try to preserve somewhere within close limits the existing percentage of black population.

If a district had 25 percent black population, try to maintain that as nearly as possible.

But you have to recognize that with the out-movement of people in the black community spreading out and dispersing into the white communities that that's not always easy to handle.

* * *

MR. SUSSMAN: Now I'm going to have marked as Bosma No. 10 an article dated March 22, 1981, entitled Political Muscle the Name of Reapportionment Game from the Indianapolis Star, written by James G. Newland, Jr.

(Plaintiffs' Deposition Exhibit No. 10 was marked for identification by the reporter.)

340 Q. This article says, and I'm quoting from it, "Senator Charles E. Bosma (Republican-Beech Grove), the person responsible for drawing the new Senate district map, readily admits that he will hurt the Democrats as much as possible within the U.S. Supreme Court's guidelines. This, he says, is the 'political reality the Democrats will have to face.'"

Is that accurate?

- A. Accurate.

* * *

351 Q. Well, you have indicated several times here today, sir, that you saw redistricting as a political activity and you weren't going to give anything away.

- A. That's right.

352 Q. Now I'm trying to understand from you what techniques then did you use to affectuate the goal of not giving anything away?

Maybe I can be more direct with you.

- A. Make every incumbent Republican district as safe as possible.

353 Q. How is that done?

- A. Well, by following the voting trends and putting sufficient Republicans in that district or encompassing the Republicans in that district in sufficient numbers to give a majority in that district.

354 Q. Now were there any incumbent Republicans who were in areas that were either marginal or Democratic that profited from the technique you just stated?

A. Yes, I suppose so.

Because we had some Republicans elected in 1978 who were elected in the landslide and who might be in what were called marginal districts.

And we tried to improve their district somewhat.

Now it wasn't always possible in every instance.

But I think there probably are two or three that will find that their districts are more to their liking than they were when they were first elected.

* * *

485 Q. Now is there a computer at the state legislature?

A. They have a computer available for I know running financial statistics.

486 Q. I take it you're not aware of whether it's available for political reapportionment?

A. I would assume that it would not be available for political reapportionment.

That's the Legislative Service Agency, a bipartisan agency.

And any partisan activity was strictly prohibited on the part of the employees. And the utilization by a party of their facilities is not permitted.

487 Q. So on that basis reapportionment probably would not have been doable on it?

A. Well, I suspect that a plan could have been done on that.

But certainly any political implication would be removed from that.

488 Q. And Legislative Services in this state has not been used to draw plans; is that correct?

A. That's correct.

They were very careful to avoid being associated with anything with regard to drawing the reapportionment plan.

489 Q. Is that part of Legislative Services charter?

A. That was a decision on their part. Because they were bipartisan and they did not want to become charged with being a partisan operation.

And reapportionment has political implications.

* * *

506 Q. Now were there any numeric goals that were set in concert with anyone at this point with regard to how many districts would be districts—and now I'm making reference specifically to exhibit 13—how many districts would come out over 55 percent Republican in terms of the median voting?

A. There were no specific goals. We didn't have a goal in mind.

We wanted to preserve the incumbents that we have already in the Senate.

507 Q. How many were there?

A. 35.

508 Q. So it's fair to say that that was the goal?

A. That was one of the objectives, to preserve the incumbents from our party.

**Excerpts from the Deposition of
J. Roberts Dailey**

[Pages 19-20, 33-34, 63]

- 74 Q. Did you, yourself, discuss with Mr. Mangus the criteria which would be established and on which redistricting would be based apart from a discussion you have indicated that these two principles would be followed in?

Did you discuss any other principles with him, any criteria?

A. Oh, sure. I'm sure.

- 75 Q. What other criteria principles do you recall discussing?

A. It would have been political in nature.

- 76 Q. What would those have related to?

A. Save as many incumbents as possible. Have as many Republican districts as possible.

* * *

- 142 Q. Now I'm going to give you Dailey No. 5 and I'm going to ask you to read as much of that article as you want.

My questions are going to focus on the 4th paragraph on the right-hand column. So if you want to read the whole article, you can.

A. Fourth paragraph, okay.

- 143 Q. Mr. Newland writes in this article, "Their biggest gun is the threat of stripping Marion County of multimember House districts in favor of single member districts. Single member districts would likely mean that Democrats would be elected to at least two of the G.O.P. seats, if not more."

Now was that something that you discussed?

A. Yes.

- 144 Q. And was your conclusion that the single member district would have that effect or might?

A. I was told that.

- 145 Q. By whom?

A. Oh, it was general conversation.

- 146 Q. Did you have conversation with Mr. Sutherlin about that?

A. I doubt that.

I did not consult with Sutherlin very often, no.

- 147 Q. Mangus?

A. Yes.

- 148 Q. Would you say that was a factor in maintaining the multi-member districts?

A. Some.

- 149 Q. What other factors were there in maintaining multi-member districts?

A. None.

* * *

- 314 Q. Let's go down the list. I believe we just finished 31. Now we're up to 48, 49, 50, 51 and 52.

What I would like you to do here again is to give me whatever reasons were operative to your mind in maintaining or creating multi-member districts with regard to 48 through 52.

A. Political.

- 315 Q. What were the political factors?

A. We wanted to save as many incumbent Republicans as possible.

- 316 Q. What alternatives to maintaining the multi-member districts would have threatened them in your judgment?

A. Single member districts.

**Excerpts from the Deposition of
Richard W. Mangus**

[Pages 29-31]

119 Q. Now were there any written guidelines that you all gave to Campbell?

A. No.

120 Q. Did you give him oral instructions?

A. Yes.

121 Q. What did you tell him the first time you gave him instructions?

A. I will talk in generality.

We decided on four things.

We decided first we had to protect minority.

Secondly, we would use—well, if you want to call it incumbent map or we would draw as near as possible the same type of map we had drawn in 1972.

Three, we would stay within the guidelines of, I think we decided four percent. But then a year later the court ordered or a federal court decision brought us down to two percent.

122 Q. The federal court procedure pertaining to state legislature as you understand it brought it to two percent?

A. That's my understanding. Minnesota or someplace.

Anyhow our chief legal advisor told us to get them all down to 2 percent.

When we started out we were going to stay within 4 percent I believe was our figures.

We was going to protect the community of interest.

Then we would look at the political possibilities of them.

123 Q. And that was the order?

A. That was the order that was considered, yes.

124 Q. Now you said the first thing you had to protect minorities.

What do you mean by that, sir?

A. Well, I'm just giving you my understanding what the legal people are telling me.

125 Q. Who told you that, your lawyers?

A. Mr. —

126 Q. You're pointing to Mr. Evans. I assume he told you this, all right.

What was your understanding about you had to protect minorities? What did that mean to you, sir?

A. It means we could not — for an example, if you had a district that had 40 or 50 percent black in it, you couldn't cut it down to 30, 10 or 15. You couldn't dilute it in other words.

Excerpts from the October Trial Transcript

[Direct Examination of David Dreyer]

[Pages 74-75]

JUDGE BROOKS: You have been around a long time. What was wrong with the way they did it procedurewise? Haven't they done bills like that before?

THE WITNESS: It is an unconventional method.

JUDGE BROOKS: What do you mean by that?

THE WITNESS: To pass a bill completely without the intended substance.

JUDGE BROOKS: You have seen them before?

THE WITNESS: I have seen it before.

JUDGE BROOKS: Does that violate any rules that you know of?

THE WITNESS: No.

MR. BOEHM: Your Honor, our contention is not that this violated legislative procedure, but it is evidence — when he finishes his story —

JUDGE BROOKS: I understand.

MR. BOEHM: Okay.

A (continuing) The Speaker of the House and the President Pro Tem of the Senate appointed conferees to the bill, all four Republican. Then in the last week of the session the public was told that there would be a hearing at which the contents of the bills would be released to the public. We obtained a copy from the Republicans the night before that hearing. That hearing was attended primarily by members of the legislature and the press. The contents of the bills were revealed and later that week, on the last session day — well, pardon me, they were subsequently — there were a few modifications made and subsequently signed by the conferees and sent back to both Houses for final passage, ratification.

Q How close to the end of the session was it when the bill first became known to you, the contents of the bill, the districts?

A It was the last week of the session, probably the morning of either Tuesday or Wednesday of that hearing.

Q And when did the session —

A The session closed that Friday.

* * *

[Direct Examination of Gordon Henderson]

[Pages 88-93]

Q Why is adherence to existing political subdivisions relevant?

A For two reasons. As in Indiana, and Indiana is not alone in this regard, there are recognitions in the state constitutions and statutes that compel respect to some degree. But I think rather more to the point, political boundaries have significance, they are often administrative units, they are established. The voters, for example, know where they are. They have a connection. They know that they live in district thus and such, and to totally — or even, indeed, in a particular precinct when they get in the habit of going to a particular voting place. Existing political units are used as the basis of campaign organizations. There are many powerful political — good and sufficient political reasons why one ought to disrupt existing political units as little as possible.

Q You are aware that the Indiana House plan involves multi member, as well as single member, districts?

A Yes, I am.

Q Now, do multi member districts have the potential to be used by the map maker to disadvantage a targeted group, whether it be racial or political or anything else?

A Yes, indeed, they do. I have been on record in this respect for some time. There is a section pending in one of my books which says multi member districts, and other discriminatory devices, they have a significant potential for discrimination.

Q Could you develop a simple graphic example for the Court that would illustrate that, using the sheet that Mr. Swarbrick is now unveiling for you?

A Yes.

Q Would you please do so,

A I have put on this large sheet of paper 16 letters. I have put down eight D's and eight R's. They are staggered, D, R, D, R across in each row, and then R, D, R, D, and so forth. The D stands for — this is a terribly oversimplified example. The D stands for a Democratic concentration that approximately equals the number of people required to make a district, or a solid majority of a particular district, and similarly the R stands for an equivalent Republican concentration.

Now, if we drew 16 single member districts we would obviously have eight Democratic districts and we would have eight Republican districts. And with single member districts, therefore, the division would be S for single member would produce a 50/50 division of seats. If, on the other hand, we draw some triple member districts, like so, and we group two Republicans and one Democrat together in a three member seat, that clearly is going to be a Republic district. And if we do that consistently throughout this entire grid we will end up — for each one of these groups of four we will end up with a division under triple districts of 75 per cent Republican, 25 per cent Democrat. This is one way simply of submerging sizable concentrations of people in a multi member district so as to work advantage to whoever it is you are trying to work this advantage to.

Q Now, you have given us that rather simple example. In general, can you explain for the Court the underlying theory, or facts, that permit multi member districts to be used to disadvantage any group that is the target of the map maker?

A The organizing principle that works here is that if you draw the lines just right you will take what would otherwise be a sizable majority in a single district and make it a large, but nonetheless submergible, minority in a multi member district, whether you are dealing with two or three or, indeed, more than that member districts.

Q Now, have you taken a look at the maps of the Marion County, Indiana — would you give him the House overlay, please.

You have before you Exhibits 7 and 8, which you will recall Mr. Dreyer explained as a color coded map of Marion County, Indiana, using the 1976 Reporter of the Supreme Court race results, color coding it by Democratic vote and giving a grey or black composition to the 75 per cent plus Democratic areas, brown for 65 to 75, red for 55 to 65, and blue for 45 to 55, and so on. First of all, you heard Mr. Dreyer tell us that in his view the Reporter's race was a reasonable gauge of raw party strength, relatively free from any individual candidate's strengths or weaknesses. Do you agree or disagree with that proposition?

A I do agree with that.

Q How about his selection of 1976 as a "normal political year"?

A I think that is a reasonable choice.

Q Now, having done that, do you find anything in Exhibits 7 and 8 that reflects any of the phenomena you just described with respect to multi member district use?

A Yes, I do.

Q Can you explain it to the Court, please?

A If you will look particularly at the 51st, 48th and 52nd districts. Looking at No. 51 first, you will see that the black area, which is those areas 75 per cent plus Democratic, have all been located, with I think only one exception, in the 51st district. This, therefore, is taking a concentration of Democrats and concentrating them in one particular district. There are two devices for doing this mentioned in perhaps the best known of all books on reapportionment and gerrymandering, and that is Robert Dixon's Democratic representation, called stacking and packing, in which you take the bulk of people to whose disadvantage you care to work as a map maker, and if there is nothing else you can

do, you concentrate them in one district so that they are an overwhelming majority in that particular district.

Again looking at 48, 51 and 52, it is also clear that those that are brown, and particularly those that are red areas, the red areas representing districts 55 to 65 per cent Democratic, have been split off, and that it is less clear, and somewhat more clear on other maps, but it can be seen as an example, again quoting Dixon, of cracking where you take a portion of a — the population, whatever it is that you seek to disadvantage and divide it among one or more districts. If you will look at those red areas, there are sizable numbers of them in 48, 52, also over on the east in 50 and a couple up on 49 and, of course, there are some in the 51st. That is a very considerable division, and even if we didn't have this map there might be reason to suspect what was going on by looking at the shapes. Shapes, by themselves, do not, I think, define a gerrymander, but I have on many occasions, including in my writings, indicated that — and certainly in testimony in Courts, that shapes are inherently — make one inherently suspicious, and you just glance at the upper northeast corner of 52nd and there is a lovely little eagle's head there and some other narrow shapes, and not in just this map, but other maps as well.

* * *

[Cross-Examination of David Dreyer]

[Page 164]

Q What effect the Carson plan would have had on the voting strength of black voters throughout the state in all the different districts. Did you make any study of that?

A Yes, I did make a study of the percentage of black population in some of the Carson plan districts.

Q But I am talking about all of the districts.

A Not every one.

Q In fact, you only did it for Marion, Lake and Allen, am I right? Well, strike that. At least you haven't done it for all of the state, have you?

A I have not done it for all of the state.

Q And there is no exhibit that shows that, is there, for all of the state?

A I have not prepared an exhibit of that.

Excerpts from the November Trial Transcript

[Cross-Examination of David Dreyer]

[Page 30]

Q As I understand your testimony, Mr. Dreyer, you were not particularly concerned about the percent black in those other districts that were not black majority? Isn't that what you told me in your deposition?

A There were very few blacks left for those other districts.

Q And you were not particularly concerned with the percent of black that was in those other districts in the Crawford plan?

A No, not particularly.

* * *

[Direct Examination of Craig C. Campbell]

[Pages 140-141]

A The multi-member districts that were split were done so at the request of the legislators themselves. Multi-member districts were — first let me back up a minute. We began with the existing districts as a starting point. If the incumbents wished their districts to be made into single member districts, and that could be done without any political impact either way, then we did so.

Q How do you mean, political impact either way?

A Where, for example, the district was a Democrat and a Republican, if both of them agreed — for example, if just a Republican had come to us and said "I want this split into a double member district," we would not have done so unless the Democrat would have agreed also.

Q And, of course, you followed the one man, one vote concept as well, did you not?

A Of course, yes.

Q Now, what, if anything, did you do to protect black voting strength when these four districts were split, Mr. Campbell?

A We made every effort to insure that to the greatest extent possible the black persons located in those districts were gathered or concentrated as much as possible in one of the two districts so as not to be split up more than necessary.

Q When a two member district was made into two single member districts?

A Yes.

* * *

[Pages 143-149]

Q I'm going to ask you some questions specifically about these four districts that became single member and we can

discuss those. How about the district in the South Bend area, was that converted from a multi-member district to two single-member districts?

A Yes.

Q Why was that done?

A At the request of the legislators.

Q And what was the party of the two members of the two member district at that time?

A One was Republican and one was Democrat.

Q And are there two new single member districts where the multi-member district was in the South Bend area?

A Yes.

Q And what is the party of the representatives in these now single member districts?

A One Republican and one Democrat.

Q And has the black voting strength in the two member district been protected?

A Insofar as possible, yes.

Q Could you tell the Court the black percent before and after reapportionment?

A Before —

Q You may look at an exhibit if you have one.

A Before reapportionment —

Q Tell the Court what exhibit you are looking at.

A Well, I do not have them numbered. I don't know that I need them.

Q This is Defendant Exhibit No. 1, which is the computation, if you care to refer to that. But go ahead.

A Prior to reapportionment the two member district was 4.9 percent black. After reapportionment the two single

member districts, one was 2 percent black and the other was 9 percent black.

Q And was this changed, then, in accordance with the wishes of the representatives?

A Yes.

Q Were there any changes made in any other metropolitan area in addition to South Bend?

A Yes.

Q Where was that?

A The Evansville area.

Q What happened down there? Tell the Court what happened down there, as you told us in South Bend.

A Again, the legislators requested that the district be divided into two single member districts, which we did so, again trying to protect black population.

Q What was the political party of those representatives?

A I believe it was two Democrats.

Q And the two single member districts are now what political --

A Two Democrats.

Q What changes, if any, were made in the Elkhart area, which would be the third multi-member district change?

MR. SUSSMAN: Could you point out the districts as you go along? It would make it quite a bit easier.

Q You might refer to the district numbers, if you would, and particularly in the Elkhart area. What is the Elkhart --

A The Elkhart area, old District 11 and new Districts 3 and 4.

Q Why was that change made?

A Again, at the request of the incumbents.

Q Both Republican?

A Yes.

Q And there was very little black percent at all in that area?

A Very little.

Q And that was made at the wishes of the representatives again?

A Yes.

Q And were there any changes made in Lake County, Mr. Campbell?

A Yes, there were.

Q Lake County, just tell us what happened in Lake County, because that is a little complicated.

A Well, yes, it is. Lake County was exceptionally difficult to work with. The population distributions geographically, combined with the way they have their precincts drawn up there, made it very cumbersome to work with. In addition, Lake County, the northern part of Lake County, lost approximately 70,000 persons in population from 1970 to 1980. The southern portion of it gained about 25,000. So there was a net loss of about 45,000 persons from Lake County. Of that loss, I believe it's 29,000 persons were lost from House District -- old House District 5, which is the Gary area, and it has two black Democrat representatives. In looking at it from a very purely technical standpoint, what should have been done was to drop -- simply make old House District 5 a single member district. However, the problem with doing so was that it would have seriously endangered one of the black Democrat representatives and --

Q Old District 5 was a district that was a two member district represented by two Democrats?

A Yes.

Q And do you remember their names?

A Rayfield Fisher and Carolyn Mosby, I believe.

Q And those were two blacks?

A Yes.

Q That was in the Gary area?

A Yes.

Q And you say there was how big a drop in population in that district in the ten years?

A Twenty-nine thousand.

Q And what options did you consider then, Mr. Campbell?

A Well, the option would have been to have made District 5 a single member district and — well, that would have been the other option. It was either to make House District 5 a single member district or some other district in that northern part of the Lake County a single member district.

Q And did you make District 5 a single member district?

A No, we did not.

Q Why not?

A Because we did not want to endanger any black Democrat representatives.

Q And what would have happened if you had made District 5 a single member districts?

A Then one of the two would have undoubtedly lost.

Q They would have fought each other?

A Yes.

Q What did you do instead of that? Instead of making this heavily — what was the black percent in District 5?

A It was 91.2 percent, I believe. Yes, 91.2 percent.

Q Instead of making that a single member district, what did you do?

A We expanded this geographical area to pick up greater numbers of people to meet the one man, one vote test, and made a different district a little farther south into a single member district.

Q And what was the black percent in District 5 once you reapportioned — It has a new number now?

A Yes, it became District 14.

Q Okay.

A District 14 currently has approximately 70 percent black. 69.9 percent.

Q But what happened to other districts in Lake County because of this drop in population that you have mentioned?

A One of them became a one member district. From a two to a one.

Q And that was old District what number?

A It roughly corresponded to old District 3.

Q And what happened to it?

A It went from a two member district to a single member district.

Q And what was the race of the — these are all Democrats?

A Yes.

Q What was the race of the two Democrats in this district, old District 3, now new District — or old District 5, I'm sorry. What is the old district that had two Democrats?

A 3.

Q And they were white Democrats?

A Yes.

Q What were their names?

A Chet Fobis and Bill Drodza.

Q And these two white Democrats were then put into the single member district?

A Yes.

Q And what other changes were made in Lake County?

A Old District 2, which had been a two member district, was continued as a two member district, but it picked up a substantial number of — it had lost some population, and in adding to it a fairly significant number of blacks were added to that district.

Q What is the new number of old District 2?

A 12

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[Pages 151-152]

Q Now, after redistricting you say District 12 had a 30.6 percent black voting strength?

A Yes.

Q What has happened in that district since reapportionment in terms of its representation?

A Prior to reapportionment it was represented by two white Democrats. Since reapportionment it is represented by one white Democrat and one black Democrat.

Q This is the first time that a black Democrat had ever been elected from that district, is that right?

A Yes, it is, to my knowledge.

Q Were any other requests made, to your knowledge, to convert specific multi-member districts to single member districts?

A Other than the four we have discussed, no.